

15 June 2009

National Human Rights Consultation Secretariat  
Attorney-General's Department  
Central Office  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Dear National Human Rights Consultation Committee

**Re: Submission to the National Human Rights Consultation**

I am pleased to provide a submission to the consultation on behalf of ACON (formerly known as the AIDS Council of NSW).

Before proceeding to deal with the key questions of the consultation, I would first like to put on the record the extreme disappointment of ACON and of many in the GLBT community, that the Committee did not make the time for a specific consultation with members of our community, particularly given the extent to which we are currently denied human rights in this country.

**About ACON**

ACON was formed in 1985 as the GLBT (gay, lesbian, bisexual & transgender) community response to HIV/AIDS epidemic. Today, ACON is Australia's largest community-based GLBT health and HIV/AIDS organisation. ACON provides information, support and advocacy for GLBT people, people with HIV, sex workers and people who use drugs.

ACON is a founding member of the National LGBT Health Alliance. In addition to this letter submission, ACON contributed significantly to the Alliance's submission to the Consultation.

**Which human rights should be protected and promoted?**

At the highest level, the protection of human rights is essential to sustaining a diverse democratic society such as Australia, at the legal level it is vital to fulfil the international obligations that Australia has taken on board by signing various international human rights treaties, but at the practical level it is about giving everyone of our citizens the sort of decent standard of living and *fair go* that we would want for ourselves and our families.

equality ● empathy ● partnership ● community ● diversity ● courage

The very concept of human rights is that there are a basic set of rights which all people are entitled to have protected simply by virtue of being human. The *Universal Declaration of Human Rights*, and the *International Covenant on Civil and Political Rights* in conjunction with the *International Covenant on Economic, Social and Cultural Rights* form the *International Bill of Rights*. All rights included in the *International Bill of Rights* should be protected and promoted in Australia.

Of the rights contained in the *International Bill of Rights*, the right to non-discrimination and equality before the law are particularly important to the GLBT community. The right to non-discrimination and equality before the law are essential as discrimination is at the root of most human rights abuses<sup>1</sup>, and GLBT Australians continue to face legal discrimination and social exclusion in our society. In addition to race, sex, age and disability that are currently prohibited as grounds for discrimination under Commonwealth legislation, sexual orientation and gender identity should be added as unacceptable grounds for discrimination.<sup>2</sup>

Another human right which is of particular interest to the GLBT community is the right to the highest attainable standard of physical and mental health, given the impact that discrimination and exclusion plays as social determinants of health. This right, along with other economic, social and cultural rights, should be appropriately protected and promoted under a human rights framework. This approach would be beneficial in highlighting and addressing the barriers to access, gaps in service provision and discrimination in the delivery of health services which members of the GLBT community face.

The right to work is another human right that is of particular importance to ACON and sex workers. This particular right "includes the right of everyone to the opportunity to gain his[sic] living by work which he[sic] freely chooses or accepts"<sup>3</sup> as well as "just and favourable conditions of work" including "safe and healthy working conditions".<sup>4</sup> While sex work has been decriminalised in some jurisdictions, laws still exist which either criminalise sex workers, makes it difficult for them to work as sex workers, or impact on their ability to work in safe and healthy conditions.

### **Are these human rights currently sufficiently protected and promoted?**

The human rights situation has improved for the GLBT community in recent decades; however there are still key gaps in the protection and realisation of human rights. Few people understand the extent to which people in the GLBT community still experience discrimination in Australia

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<sup>1</sup> S Joseph, M Castan & J Schultz, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2<sup>nd</sup> ed, Oxford University Press, 2004, p. 680.

<sup>2</sup> For example see the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*.

<sup>3</sup> Art 6, *International Covenant on Economic, Social and Cultural Rights*, 1966.

<sup>4</sup> Art 7, *International Covenant on Economic, Social and Cultural Rights*, 1966.

today, or the fact that for many there may be no form of legal redress when it does occur.

The lack of anti-discrimination legislation prohibiting discrimination on the ground of sexual orientation and gender identity at the Commonwealth level is a major gap in the human rights protection framework in Australia. The only Commonwealth legislative protection against discrimination for gay, lesbian and bisexual Australians sits within industrial relations legislation in relation to employment, and that does not extend to cover transgender people. Other areas of discrimination, such as in education, accommodation, service provision and vilification on the ground of sexual orientation or gender identity are not prohibited under Commonwealth legislation.

Discrimination impacts on the health, and thus the corresponding right to health, of GLBT individuals. For example, a national survey in 2006 reported that 33% of gay, lesbian, bisexual, transgendered and intersex Australians had experienced depression.<sup>5</sup> There is also significant evidence of a correlation between homophobia and higher levels of drug and alcohol abuse.<sup>6</sup> The reported direct discrimination that GLBT individuals have faced in the health system,<sup>7</sup> on top of the systemic discrimination in the access and provision of services further prevents the realisation of the right to the highest attainable standard of physical and mental health.

Another gap in the human rights protection of the GLBT community is the lack of relationship recognition of same-sex couples. While an important step in addressing discrimination against the GLBT community, the recent changes recognising same-sex de facto couples under federal law do not address the ongoing lack of formal recognition of same-sex relationships. Same-sex couples are discriminatorily excluded from the civil institution of marriage, violating the right to non-discrimination as well as the right to equality before the law. At the same time there is a lack of consistency across jurisdictions in relation to parenting laws, with many states not recognising the rights of same-sex parents.

Furthermore, the high level of violence and harassment faced by members of the GLBT community indicates that their right to security of persons are not adequately protected.<sup>8</sup>

### **How could Australia better protect and promote human rights?**

A Human Rights Act, with explicit non-discrimination protections on the grounds of sexual orientation and gender identity and inclusive of the

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<sup>5</sup> M Pitts, A Smith, A Mitchell & S Patel, *Private Lives: A Report on the Health and Wellbeing of GLBTI Australians*, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne, 2006, p. 31.

<sup>6</sup> L Hillier, A Turner, A Mitchell, *Writing Themselves In Again: The 2<sup>nd</sup> National Report on the Sexual Health & Wellbeing of Same-Sex Attracted Young People in Australia*, Australian Research Centre in Sex, Health & Society, La Trobe University, Melbourne, 2005, p. 43

<sup>7</sup> Victorian Gay and Lesbian Rights Lobby, *Enough is Enough: A Report on Discrimination and Abuse Experienced by Lesbians, Gay Men, Bisexuals and Transgender People in Victoria*, Melbourne, 2000

<sup>8</sup> See M Pitts, A Smith, A Mitchell & S Patel, *Private Lives: A Report on the Health and Wellbeing of GLBTI Australians*, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne, 2006, p. 50

rights contained in the International Bill of Rights is an appropriate step in better protecting and promoting human rights in Australia.

To address the gap in anti-discrimination legislation at the Commonwealth level, a new act prohibiting discrimination on the grounds of sexual orientation and gender identity should be introduced. The Human Rights Act and the new anti-discrimination law should have broad coverage and should not include blanket and permanent exemptions, as is the case with the *Racial Discrimination Act 1975*.

In addition, the Australian Human Rights Commission should be strengthened through increased funding, increased power in conciliation and court interventions as well as restoring some of its arbitration powers in situations where judicial power is not exercised. The Australian Human Rights Commission should also be explicitly empowered to cover discrimination on the basis of sexual orientation and gender identity.

If you require further information regarding this submission, or would like ACON to make an oral submission to the Consultation, please do not hesitate to contact David Scamell, Manager of Policy, Planning and Research on 02 9206 2048 or via email at [dscamell@acon.org.au](mailto:dscamell@acon.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stevie Clayton', enclosed within a circular scribble.

Stevie Clayton OAM  
**Chief Executive Officer**